

# THE IMPACT OF STATES PARTIES' RESERVATIONS TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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## INTRODUCTION

Thank you for including me in today's symposium. It is an honor to be a part of this event and on this panel, *Experiences of States Parties in Trying to Live Up to CEDAW's Provisions*. Today, I will examine the prevalence of reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and how they may impact the implementation of the

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treaty. My co-panelist, Jamil Dakwar, will specifically address the proposed U.S. reservations to CEDAW, should the United States become a party. I will look at the issue more broadly, showing how ratification alone should not be seen as a panacea.

Many states have become parties to the treaty without truly obligating themselves to achieving the goal of equality for women. Rather, reservations purport to allow states to become parties in name only, while not requiring crucial changes in the country's laws or society's practices.

I will briefly explain the concept of reservations under treaty law as applied to CEDAW. I will then examine how states use reservations to CEDAW for various ends. I will use Singapore to illustrate multiple possibilities: first, as a state that entered a broad reservation, showing how states may drastically limit the requirement to make true progress in women's rights; second, as a state that partially withdrew its reservation, demonstrating the potential impact of pressure from the Committee on Elimination of Discrimination against Women (the Committee) and advocacy groups that relied on CEDAW to push for reforms; and finally, as a state that nonetheless maintained a not-insignificant reservation, perhaps exemplifying the use of CEDAW reservations for political ends.<sup>1</sup> The complex history of Singapore's reservation practice allows for multiple interpretations, making it a useful example. There are, however, other countries that may illustrate each point in more significant ways.

## I. CEDAW

CEDAW entered into force in September of 1981.<sup>2</sup> There are currently 187 States parties to the treaty.<sup>3</sup> A reservation is any

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1. Marsha Freeman, for example, has noted that some countries attach meaningful reservations in order to make political points about Islamic theocracies as part of internal politics. See Marsha A. Freeman, Keynote Address at the Michigan State Law Review Symposium on Whether the U.S. Should Become a Party to the U.N. Convention on the Elimination of All Forms of Discrimination against Women (Nov. 7, 2013).

2. Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

3. *Id.*; *Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-)

statement made when ratifying a treaty that “purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”<sup>4</sup>

According to one commentator, CEDAW has been “subject to more reservations than any other international human rights treaty.”<sup>5</sup> Seventy-seven countries entered reservations upon ratification of the treaty.<sup>6</sup> But the sheer number of reservations can be misleading. Many of the reservations are to Article 29, regarding dispute resolution.<sup>7</sup> This provision specifically allows states to enter a reservation in order to opt out of the procedure.<sup>8</sup> Moreover, CEDAW’s reputation regarding reservations may be unwarranted; international human rights expert Marsha Freeman points out that the Convention on the Rights of the Child actually has more substantive reservations overall than CEDAW.<sup>9</sup>

Several countries have subsequently withdrawn reservations, in whole or in part. In fact, “more reservations to the Convention have been modified or removed than those to any other human rights treaty”—impacting both general reservations as well as reservations to specific provisions (including Article 29).<sup>10</sup>

Nonetheless, a number of States parties maintain noteworthy reservations.<sup>11</sup> It is not clear whether such reservations have an effect

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8&chapter=4&lang=en (last visited Mar. 17, 2014) [hereinafter *Participants, Declarations, and Reservations*].

4. Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

5. SUSAN W. TIEFENBRUN, WOMEN’S INTERNATIONAL AND COMPARATIVE HUMAN RIGHTS 52-53 (2012).

6. *Declarations, Reservations and Objections to CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm#N20> (last visited Mar. 17, 2014).

7. *See id.*

8. CEDAW, *supra* note 2, at 23.

9. Freeman, *supra* note 1.

10. Jane Connors, *Article 28*, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 591 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter CEDAW COMMENTARY].

11. *Compare, e.g., Brazil, Declarations, Reservations and Objections to CEDAW*, *supra* note 6 (expressing Brazil’s withdrawal of reservations to Article 15(4) and Article 16(1)(a), (c), (g), and (h)), with Brunei Darussalam, *Declarations, Reservations and Objections to CEDAW*, *supra* note 6 (“The Government of Brunei Darussalam expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam and, without prejudice to the generality of the said reservations, expresses its reservations

on the human rights of women in those countries. Professor Neil Andrew Englehart's review of data shows no statistically significant impact on rights based on reservations, even when taking the type of reservation into account.<sup>12</sup> In a broader study looking at several human rights treaties, Todd Landman finds that countries that have ratified treaties more recently, third- and fourth-wave democracies, tend to do so with fewer reservations; but as less-established democracies, these states tend to have higher levels of human rights violations.<sup>13</sup> Overall, there does not seem to be a significant correlation between the number or type of reservation and the human rights conditions in a country.<sup>14</sup> Regardless of any statistically significant correlations, an examination of CEDAW reservations can be useful. It can help uncover the most controversial provisions of the treaty and the use of CEDAW mechanisms for internal political reasons.

#### A. The Usual Suspects: Articles 2 and 16

The Committee has expressed concern over many of the reservations, particularly those to Articles 2 and 16.<sup>15</sup> Article 2 is CEDAW's policy measures or "undertakes" provision, meaning that it requires states to undertake certain action.<sup>16</sup> Specifically, Article 2 provides:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

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regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.").

12. Neil Andrew Englehart, Remarks at the Michigan State Law Review Symposium on Whether the U.S. Should Become a Party to the U.N. Convention on the Elimination of All Forms of Discrimination against Women (Nov. 8, 2013).

13. TODD LANDMAN, PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY 7, 118 (2005).

14. *See id.* at 133.

15. *Reservations to CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last visited Mar. 17, 2014).

16. CEDAW, *supra* note 2, at 16.

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.<sup>17</sup>

In short, Article 2 requires states to undertake—without delay—certain policy measures to embody equality through their constitution or appropriate legislation; establish equal protection of women; refrain from any practice of discrimination; take all measures to change laws, regulations, customs, and practices that discriminate against women; and repeal any penal provisions that discriminate against women.<sup>18</sup>

Discrimination against women is defined broadly as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>19</sup>

Article 16 tackles the controversial area of family relations. Article 16 provides:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;

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17. *Id.*

18. *Id.*

19. *Id.*

- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
  - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
  - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.<sup>20</sup>

In short, Article 16 regulates marriage and divorce as well as rights regarding children, work, and property.<sup>21</sup> “Article 16 is the most reserved substantive article in the Convention.”<sup>22</sup> The number of reservations to this provision—and the paucity of withdrawals of such reservations—indicate that the rights enumerated here are fraught with controversy. The controversial nature of this provision was known at the drafting stage.<sup>23</sup> Reservations to Article 16 often include explanations based on Islamic sharia.<sup>24</sup>

## B. Object and Purpose of the Treaty

Under CEDAW, as well as under the Vienna Convention on the Law of Treaties, a reservation is impermissible if it “is

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20. *Id.* at 20.

21. *Id.*

22. Marsha Freeman, *Article 16*, in CEDAW COMMENTARY, *supra* note 10, at 409, 441.

23. Connors, *supra* note 10, at 573.

24. *Id.*

incompatible with the object and purpose of the treaty.”<sup>25</sup> The Committee has indicated that both Articles 2 and 16 are “core provisions.”<sup>26</sup> In particular, Article 2 is central to the object and purpose of the treaty.<sup>27</sup> According to the Committee, “States parties which ratify the Convention do so because they agree that discrimination against women in all its forms should be condemned and that the strategies set out in article 2, subparagraphs (a) to (g), should be implemented by States parties to eliminate it.”<sup>28</sup>

Similarly, the Committee has stated that “reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible.”<sup>29</sup> Yet, the number of reservations to these articles—and perhaps the state of inequality for women worldwide—implies that some countries may ratify CEDAW without actually believing in its substance.

The Committee has recognized this problem.<sup>30</sup> It has indicated that reservations to CEDAW show the state’s unwillingness to accept women’s rights and ensure the continued subjugation of women in that country.<sup>31</sup>

Reservations to articles 2 and 16 perpetuate the myth of women’s inferiority and reinforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives.<sup>32</sup>

### C. Blanket Reservations

In addition to reservations to Articles 2 and 16, among others, some States parties issue blanket reservations. For example, take Saudi Arabia, which ratified CEDAW in 2000.<sup>33</sup> It ratified with the

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25. Vienna Convention on the Law of Treaties, *supra* note 4, at 337; *see* CEDAW, *supra* note 2, at 23.

26. Rep. of the Comm. on the Elimination of Discrimination against Women, 18th Sess., 19th Sess., Jan. 19-Feb. 6, 1998, June 22-July 10, 1998, at 47, U.N. Doc. A/53/38/Rev.1; GAOR, 53d Sess., Supp. No. 38 (1998).

27. *Id.* at 49.

28. *Id.*

29. *Id.*

30. Even if empirical proof is lacking that reservations decrease women’s rights, the Committee is clearly concerned about reservations to Articles 2 and 16, whether regarding the potential effect or symbolic import. *Id.* at 47.

31. *Id.* at 49.

32. *Id.*

33. *Participants, Declarations, and Reservations, supra* note 3.

reservation, “[i]n case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under the obligation to observe the contradictory terms of the Convention.”<sup>34</sup> Similarly, Mauritania agreed to be bound to the treaty “in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.”<sup>35</sup>

The Vienna Convention on the Law of Treaties specifies that a state may not agree to be bound by only part of the treaty, unless the treaty or the other contracting states permit it.<sup>36</sup> While few States parties to CEDAW formally claim to be ratifying only part of the treaty, as Mauritania does, the broadest reservations approach this: states ratify with the caveat that they will adhere to only those parts of the treaty that are consistent with their internal laws, religion, or culture.

The Committee has called on States parties to withdraw such reservations.<sup>37</sup> Other States parties have also objected to such reservations. According to the Vienna Convention on the Law of Treaties, an objection by another state party will not prevent the treaty from coming into force between those two states unless the objector so specifies.<sup>38</sup> While many States parties have objected to blanket reservations and to reservations to Articles 2 and 16 (among others),<sup>39</sup> they have not attempted to block the treaty’s entry into force.

Take, for example, Austria’s objection to Mauritania’s blanket reservation. Austria noted that it “raises doubts as to the degree of commitment assumed by Mauritania” and recalled that incompatible reservations are not permitted.<sup>40</sup> But Austria concluded that its objection “does not preclude the entry into force in its entirety of the Convention between Mauritania and Austria.”<sup>41</sup>

34. United Nations, Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Initial and Second Periodic Reports of States Parties: Saudi Arabia, ¶ 3, U.N. Doc. CEDAW/C/SAU/2 (Mar. 29, 2007).

35. *Declarations, Reservations and Objections to CEDAW*, *supra* note 6.

36. Vienna Convention on the Law of Treaties, *supra* note 4, at 336.

37. See, e.g., Rep. of the Comm. on the Elimination of Discrimination against Women, 11th Sess., Jan. 20-30, 1992, at 7, U.N. Doc. A/47/38; GAOR, 47th Sess., Supp. No. 38 (1992).

38. Vienna Convention on the Law of Treaties, *supra* note 4, at 337.

39. *Declarations, Reservations and Objections to CEDAW*, *supra* note 6.

40. *Id.*

41. *Id.*



The typical way of dealing with impermissible reservations—based on other States parties' objections—does not seem well suited to CEDAW or human rights treaties in general. Multilateral human rights treaties are not aimed at protecting Austrian citizens from Mauritania, for example. Rather, human rights treaties are most often aimed at ensuring protections of citizens in their own country. As another treaty body said, human rights treaties "are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights."<sup>42</sup> The Human Rights Committee, interpreting reservations to the International Covenant on Civil and Political Rights, concluded that "reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law."<sup>43</sup>

Thus, the Committee has concluded that reservations to CEDAW Articles 2 and 16, and overbroad reservations, are impermissible. But there is no enforcement mechanism in CEDAW, and the general principles of international law that rely on interstate reciprocity are inapposite.<sup>44</sup> As a result, the Committee is left to repeatedly request States parties to remove such reservations, either in its general comments or in responses to individual state reports.

## II. CASE STUDY: SINGAPORE

This brings us to one example that may illustrate the varied ways reservations may be used by States parties. First, broad reservations may directly impact the implementation of CEDAW or at least send a message that the state does not accept the full enforcement of women's human rights. Second, the partial withdrawal of a reservation may show the role of the treaty in bringing change to some countries. Third, the maintenance of a possibly unnecessary reservation may illustrate how treaty reservations are used for internal political reasons.

The evolution of Singapore's reservations and the implementation of the treaty also show how CEDAW can play out on the ground. I will first outline Singapore's initial reservation and the reaction by other States parties and the Committee. Second, I will discuss the changes in state law and the participation of civil society

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42. Rep of the Human Rights Comm., 52d Sess., 53d Sess., 54th Sess., Oct. 7-Nov. 4, 1994, Mar. 20-Apr. 7, 1995, July 3-28, 1995, at 123, U.N. Doc. A/50/40, Annex V; GAOR, 50th Sess., Supp. No. 40 (1996).

43. *Id.* at 124.

44. *Id.* at 123.

in using CEDAW to push for reforms. This culminated in the partial withdraw of one key reservation. But limitations still remain, and the fight continues for reforms that will enable the full removal of reservations. It may be, however, that the reasons for maintenance of one key reservation are more related to internal politics<sup>45</sup> than CEDAW implementation.

Singapore acceded to the treaty in 1995.<sup>46</sup> In addition to a reservation explicitly allowed by CEDAW regarding settlement of disputes,<sup>47</sup> it attached the following reservations:

(1) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.

(2) Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such laws and conditions governing the entry into, stay in, employment of and departure from its territory of those who do not have the right under the laws of Singapore to enter and remain indefinitely in Singapore and to the conferment, acquisitions and loss of citizenship of women who have acquired such citizenship by marriage and of children born outside Singapore.

(3) Singapore interprets article 11, paragraph 1 in the light of the provisions of article 4, paragraph 2 as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Singapore and considers that legislation in respect of article 11 is unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation.<sup>48</sup>

Although there have been some interesting developments with regard to other reservations, I will focus here on reservation 1.

#### A. Reservation to Articles 2 and 16 and Objections Thereto

Singapore's first reservation is a blanket reservation to Articles 2 and 16:

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45. Freeman, *supra* note 1.

46. *Participants, Declarations, and Reservations*, *supra* note 3.

47. CEDAW, *supra* note 2, at 23 (allowing opt out of referral of dispute over interpretation of convention to International Court of Justice).

48. *Declarations, Reservations and Objections to CEDAW*, *supra* note 6.

(1) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.<sup>49</sup>

Several states object to this reservation. For example, Finland objects to this reservation on several grounds.<sup>50</sup> First, the general reference to religious or personal laws is too vague and raises doubts as to the commitment to adhere to the treaty.<sup>51</sup> Second, states generally cannot invoke internal law to justify non-adherence to treaty obligations.<sup>52</sup> Finland concludes that the reservations are impermissible and "devoid of legal effect."<sup>53</sup> Denmark and Sweden make similar objections.<sup>54</sup> In the same vein, Norway objects that "a reservation by which a State party limits its responsibilities under the Convention by invoking general principles of internal law may create doubts about the commitments of the reserving State to the object and purpose of the Convention and, moreover, contribute to undermine the basis of international treaty law."<sup>55</sup> The Netherlands objects that "the reservation under (1) is incompatible with the purpose of the Convention."<sup>56</sup>

This sort of reservation shows how a state party can essentially opt out of taking on new obligations under the treaty. As a result, there is a lacuna in treaty rights that allows for the state to continue to violate women's human rights without violating the treaty, as it adheres to it. This is not to say that Singapore is the worst of the worst when it comes to protecting women's rights.<sup>57</sup> But its reservation 1 exemplifies the sort of reservation that either in real or symbolic effect facilitates a lack of respect for the full panoply of women's rights enshrined in the treaty.

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Thanks to Marsha Freeman and Neil Englehart for emphasizing that this point needs to be explicit. Freeman, *supra* note 1; Englehart, *supra* note 12.

## B. Reports 1–3 to the Committee

Under CEDAW, States parties are supposed to submit a report to the Committee within one year of entry into force and typically every four years after that.<sup>58</sup> As is often the case, Singapore submitted its initial report late, in November of 1999, and submitted its second report in May of 2001.<sup>59</sup> In the Committee's concluding comments on these reports, it found that Singapore's reservations "impede full implementation of the Convention."<sup>60</sup> The Committee noted that some reforms had already been introduced into the law that allows Muslims to practice their personal and religious laws, and urged that further reforms be made.<sup>61</sup> It stressed "that [A]rticles 2 and 16 are the very essence of obligations under the Convention."<sup>62</sup>

In 2007, the Committee considered Singapore's next report.<sup>63</sup> By that time, Singapore had withdrawn the reservation related to Article 9 (citizenship by descent), but maintained its most objectionable reservation to Articles 2 and 16.<sup>64</sup> The Committee therefore "reiterate[d] its deep concern" about the reservation to Articles 2 and 16 and that it considered it "contrary to the object and purpose" of the treaty.<sup>65</sup> It urged Singapore to consult with all stakeholders to revise the law as necessary to withdraw the reservation.<sup>66</sup> At the same time, it asked Singapore to include an analysis of the reservation's "impact on different groups of women."<sup>67</sup> This may have inadvertently sent a signal that there was no real expectation that the reservation would be fully withdrawn by

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58. See CEDAW, *supra* note 2, at 22.

59. United Nations, Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Second Periodic Reports of States Parties: Singapore, at 4, U.N. Doc. CEDAW/C/SGP/2 (May 3, 2001).

60. Rep. of the Comm. on the Elimination of Discrimination against Women, 24th Sess., 25th Sess., Jan. 15-Feb. 2, 2001, July 2-20, 2001, at 53, U.N. Doc. A/56/38; GAOR, 56th Sess., Supp. No. 38 (2001).

61. *Id.* at 52-54.

62. *Id.* at 53.

63. United Nations, Comm. on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Singapore, 39th Sess., July 23-Aug. 10, 2007, ¶ 1, U.N. Doc. CEDAW/C/SGP/CO/3 (Aug. 10, 2007).

64. *Id.* ¶ 5.

65. *Id.* ¶ 11.

66. *Id.* ¶ 12.

67. *Id.*

the time of the next report. On the other hand, the Committee offered specific suggestions about how to work toward compliance with Article 2 and how to “remove inconsistencies between civil law and sharia law.”<sup>68</sup>

### C. Most Recent Report and Shadow Reports

The government of Singapore filed its next report in April of 2009.<sup>69</sup> It reported progress, such as the withdrawal of the reservation to Article 9 based on a constitutional amendment (re: citizenship) and changes in legislation.<sup>70</sup> The government monitors compliance with CEDAW via the Inter-Ministry Committee, which also works with civil society.<sup>71</sup> The government announced a partial withdrawal of the reservation to Articles 2 and 16 in July 2011, based on internal reforms of sharia law and practice.<sup>72</sup> In particular, the minimum age for most Muslim marriages was raised to eighteen and changes were made to Muslim inheritance law.<sup>73</sup> But a reservation against “specific elements of articles 2 and 16” was deemed necessary based on “the need for the Muslim minority community to practice their family and personal laws.”<sup>74</sup>

Various organizations involved in CEDAW issues in Singapore provided “shadow reports” to the Committee. For example, the Singapore Council of Women’s Organisations submitted a report to the Committee for the 49th session.<sup>75</sup> This nongovernmental

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68. *Id.* ¶ 16. The Committee also raised specific concerns regarding the narrow definition of trafficking, inadequate legal protection of foreign domestic workers, lack of criminalization of marital rape, and employment discrimination issues. *Id.* ¶¶ 21-31.

69. United Nations, Comm. on the Elimination of Discrimination against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Fourth Periodic Reports of States Parties: Singapore, U.N. Doc. CEDAW/C/SGP/4 (Apr. 3, 2009).

70. *Id.* at 2.

71. See MDM Halimah Jacob, Minister of State for Cmty. Dev., Youth & Sports & Leader of the Sing. Delegation to the 49th CEDAW Session, Remarks at U.N. Headquarters ¶¶ 5, 7 (July 22, 2011) (transcript available at [http://www2.ohchr.org/english/bodies/cedaw/docs/statements/Singapore\\_CEDAW49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/statements/Singapore_CEDAW49.pdf)).

72. *Id.* ¶¶ 25-26.

73. *Id.* ¶ 27.

74. *Id.* ¶ 28.

75. SING. COUNCIL OF WOMEN’S ORGS., CEDAW SHADOW REPORT: NATIONAL NGO COMMENTARY ON THE FOURTH PERIODIC REPORT OF THE REPUBLIC OF SINGAPORE TO THE UNITED NATIONS COMMITTEE ON CEDAW (49TH SESSION)

organization (NGO) applauded progress, such as the change in citizenship law allowing the lifting of reservation to Article 9, partial abolition of marital rape immunity, increased involvement of women in politics and public life, improvement in wages for women, and changes regarding the age of marriage and other family law provisions.<sup>76</sup> It advocated that the government consider changing its reservations to Articles 2 and 16, to maintain only a partial reservation to Article 2(f) and Article 16(1)(a) and (c).<sup>77</sup> It argued that only narrow reservations would be necessary given the current reforms to the law and that further reforms could be made to enable the withdrawal of all reservations.<sup>78</sup>

The advocacy group AWARE argued for the same partial withdrawal of the reservation.<sup>79</sup> Specifically, Article 2(f) commits a country to take measures to modify or abolish laws, regulations, customs, or practices that discriminate against women.<sup>80</sup> A reservation to this would allow Singaporean law to continue to carve out an exception for certain Islamic practices.<sup>81</sup> AWARE noted that this should be a temporary measure because Article 2 “is the *raison d’être* for CEDAW.”<sup>82</sup> The specific practices that would need to be changed include practices privileging men as to polygamy, inheritance rights, marriage rights, and divorce rights.<sup>83</sup> The other provisions of Article 2, according to the government’s own positions, are met—meaning no reservation to them is necessary.<sup>84</sup>

As to Article 16, AWARE noted that Singapore already has laws that ensure most of these rights.<sup>85</sup> The exception is subparagraphs 1(a) and (c), which cover equal rights to enter marriage and equal rights and responsibilities during marriage or its dissolution.<sup>86</sup> AWARE noted that some changes had already been

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(2011), *available at* <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/SCWOforthesession.pdf>.

76. *Id.* at 10.

77. *Id.*

78. *Id.* at 14.

79. ASS’N OF WOMEN ACTION & RESEARCH, CEDAW SHADOW REPORT 6 (2011), *available at* [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWARE\\_forthesession.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWARE_forthesession.pdf).

80. *Id.* at 28.

81. *Id.* at 7.

82. *Id.* at 30-31.

83. *Id.* at 30.

84. *Id.* at 31.

85. *Id.* at 139.

86. *Id.* at 7.

made to conform to Article 16; thus, the government's refusal to drop the blanket reservation was invalid.<sup>87</sup> It noted that the marriage age for girls was raised and that other Muslim countries have removed similar reservations to Article 16(2).<sup>88</sup>

AWARE recognized that Article 16 (1)(a) and (c) might "interfere" with rights granted to Muslims under the Administration of Muslim Law Act (AMLA).<sup>89</sup> It therefore argued that the government should modify its reservation to address only these Articles.<sup>90</sup>

#### D. Partial Withdrawal of Reservation to Articles 2 and 16

If the government had followed this advice, then the partial withdrawal of reservations to Articles 2 and 16 would be a more significant victory for women's human rights in Singapore. Instead, the government's action seems to be an incremental change at best, at least on paper.

Recall that Singapore's original reservation provides:

(1) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.<sup>91</sup>

Singapore stated that it would modify this reservation "so as to achieve a more complete application of the Convention."<sup>92</sup> Singapore changed the wording to "reserves the right not to apply the provisions of article 2, paragraphs (a) to (f), and article 16, paragraphs 1(a), 1(c), 1(h), and article 16, paragraph 2, where compliance with these provisions would be contrary to their religious or personal laws."<sup>93</sup>

Note that most of Article 2 is still included in the reservation. The beginning of Article 2 is apparently in force, but it simply condemns discrimination, leaving it to subparagraphs (a)–(g) to actually implement policies to end discrimination against women. Singapore still reserves the right to ignore (a)–(f) to the extent they

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87. *Id.*

88. *Id.* at 141-42.

89. *Id.* at 145.

90. *Id.*

91. *Declarations, Reservations and Objections to CEDAW*, *supra* note 6.

92. *Participants, Declarations, and Reservations*, *supra* note 3.

93. *Id.*

are incompatible with internal laws. The only “undertaking” that is in force is subparagraph (g), the repeal of penal provisions that discriminate against women. Since the basis for the reservation is “religious or personal” laws, it seems unlikely that Article 2(g) was relevant in the first place.<sup>94</sup> Therefore, the partial withdrawal of the reservation as to Article 2 is not a significant improvement.

With regard to Article 16, Singapore did more than maintain the reservations to subparagraphs 1(a) and (c), as predicted by the shadow reports. It also retained a reservation to (1)(h),<sup>95</sup> which grants equal property rights to spouses.<sup>96</sup> Moreover, it reserved the right to allow child marriages, apparently because recent changes raising the age of marriage to eighteen had a loophole: at least until 2009, a girl below the age of eighteen but over the age of puberty could be married with special permission of religious authorities.<sup>97</sup> AWARE had argued, unsuccessfully, that a reservation for this minor exception is unnecessary and misleading, given that the number of such marriages is small.<sup>98</sup>

The Committee reacted to Singapore’s partial withdrawal by reiterating that the remaining reservations to Articles 2 and 16 “are impermissible since these articles are fundamental to the implementation of all the other provisions of the Convention.”<sup>99</sup> It noted Singapore’s statement that it is considering further review of its reservations and urged it to withdraw the reservations to Articles 2 and 16, “which are contrary to the object and purpose of the Convention, within a concrete time frame.”<sup>100</sup>

Based on the shadow reports submitted to the Committee, it seems that Singapore has a vibrant civil society attuned to CEDAW and its processes. The Convention seems to have helped spark reforms in some areas. Yet for two key provisions, related to policy measures and marriage and family life, the advocacy groups were less successful. Although Singapore changed its blanket reservation to a more targeted reservation specifying the relevant provisions, its

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94. *Id.*

95. *Id.*

96. CEDAW, *supra* note 2, at 20.

97. ASS’N OF WOMEN ACTION & RESEARCH, *supra* note 79, at 142-43.

98. *Id.* at 143.

99. United Nations, Comm. on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Singapore, 49th Sess., July 11-29, 2011, ¶ 13, U.N. Doc. CEDAW/C/SGP/CO/4/Rev.1 (Jan. 16, 2012).

100. *Id.* ¶ 14.



reservation still encompasses almost the entirety of Article 2. Moreover, it arguably covers more of Article 16 than is necessary, as least according to advocacy groups.<sup>101</sup>

The partial withdrawal can be used to demonstrate two potential phenomena. First, it may show the effectiveness of CEDAW advocacy, by both the Committee and civil society. Second, it may represent states' use of CEDAW to make political points. Here, Singapore may be maintaining the reservation in order to score political points at home with the Muslim minority.<sup>102</sup> If the NGO reports are accurate and the remaining parts of the reservation are not necessary in light of Singaporean law, then political motivations may explain the partial—rather than total—withdrawal here. Singapore would certainly not be the first state to use treaty mechanisms to send messages to internal constituents.<sup>103</sup>

### CONCLUSION

The NGO group AWARE has argued that Singapore's "reservations are stopping us from passing legislation, for instance in the field of employment law, to protect women against discrimination."<sup>104</sup> This is, of course, the opposite of the intent of the CEDAW system. Singapore's violations may be relatively minor in comparison to the most egregious abuses against women worldwide. Nonetheless, internal actors believe that the reservations do have a direct, negative impact on the rights of women in Singapore.

Ratification of the treaty is supposed to improve women's rights across the board. As this brief examination of reservations has shown, however, the impact of joining CEDAW can be stunted by overbroad reservations. These reservations may be general, purporting to limit obligations under the treaty only to those already granted under internal or religious law. Other reservations, like those

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101. See generally ASS'N OF WOMEN ACTION & RESEARCH, *supra* note 79; SING. COUNCIL OF WOMEN'S ORGS., *supra* note 75.

102. See Freeman, *supra* note 1.

103. The United States has routinely attached a package of Reservations, Understandings & Declarations to any number of human rights treaties. See, e.g., Ann Elizabeth Mayer, *Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?*, 23 HASTINGS CONST. L.Q. 727, 753-54 (1996) (discussing political aspects of treaty reservations in the U.S.); Jamil Dakwar, Remarks at the Michigan State Law Review Symposium on Whether the U.S. Should Become a Party to the U.N. Convention on the Elimination of All Forms of Discrimination against Women (Nov. 8, 2013).

104. ASS'N OF WOMEN ACTION & RESEARCH, *supra* note 79, at 32.

of Singapore, may be more specific but may still have the effect of limiting the state party's commitments under the treaty. If reservations are maintained for political reasons, there is still a message being sent to women that their rights are subject to at least symbolic degradation for political gain.

The symbolism of treaty reservations can be powerful, in addition to their potential impact on women's human rights. The United States has still not ratified CEDAW, but even presidents who supported ratification have proposed reservations to the treaty.<sup>105</sup> If the United States does ratify CEDAW with its usual package of reservations, understandings, and declarations, it will be following the poor example of states that ratify a treaty while professing no intention to significantly alter its current obligations regarding women's rights.

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105. See Mayer, *supra* note 103, at 798 (discussing President Clinton's proposal to the Senate).





























